

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, DC 20554

In the Matter of	)	EB Docket No. 02-21
)	
PENINSULA COMMUNICATIONS, INC.)	
	)	File No. EB 01-IH-0609
Licensee of stations	)	FRN: 0001-5712-15
KGTL, Homer, Alaska;	)	Facility ID Nos. 52152
KXBA(FM), Nikiski, Alaska;	)	86717
KWVV-FM, Homer, Alaska; and	)	52145
KPEN-FM, Soldotna, Alaska.	)	52149
)	
Licensee of FM translator stations)	
K292ED, Kachemak City, Alaska;	)	52150
K285DU, Homer, Alaska;	)	52157
K285EG and K272DG, Seward, Alaska	)	52158 and 52160
)	
Former licensee of FM translator stations)	
K285EF, Kenai, Alaska;)	
K283AB, Kenai/Soldotna, Alaska;)	
K257DB, Anchor Point, Alaska;)	
K265CK, Kachemak City, Alaska;)	
K272CN, Homer, Alaska; and)	
K274AB and K285AA, Kodiak, Alaska)	

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DEC 17 2004

Federal Communications Commission
 Office of Secretary

To: The Commission

**PETITION OF KSRM, INC.
 FOR LEAVE TO FILE COMMENTS**

KSRM, Inc. ("KSRM"), by its attorney, hereby respectfully requests leave to file comments in the referenced matter. These comments are directed to a "Request to Reopen the Record and for Official Notice" filed by Peninsula Communications, Inc. ("PCI") on December 14, 2004.

We respectfully submit that the proffered Comments are not only appropriate but necessary. As noted therein, the Commission is now faced with an extremely serious matter. The PCI Request urges the Commission to apply recent amendments to the Communications Act

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to the long-pending ordeal during which PCI operated unauthorized facilities. After defying Commission orders, contradicting its own former strategy, and launching unsuccessful collateral attacks – and all the while maintaining lucrative operations to the derogation of its law-abiding competitors¹ – PCI has now resorted to a “private bill” to obtain relief to which it could not possibly have justified entitlement in order to avoid facing the consequences of its illegal acts throughout the last decade.²

The Enforcement Bureau is expected to take a lead role in prosecuting a license revocation proceeding. Consistent with its mandate, in its December 24, 2002 “Proposed Findings of Fact and Conclusions of Law” and again in its January 23, 2003 reply to PCI’s proposed findings and conclusions, the Bureau forcefully advanced its “strongly held view that all of PCI’s licenses should be revoked” and that “a decision to the contrary would simply encourage lawlessness by PCI and others.” Bureau Reply at pp. 2, 14. Yet, following issuance of the *Initial Decision*, FCC 03D-01, released June 19, 2003, the Bureau inexplicably changed course and since then has taken a surprisingly complacent view, going so far as to not file any exceptions and, in its reply to PCI’s exceptions, wholeheartedly endorsing the judge’s decision to enable PCI to retain the vast majority of its subject facilities – the very same facilities that only months earlier the Bureau had argued convincingly in favor of revoking. As a result, KSRM and other parties, who have suffered for nearly a decade while Peninsula’s illegal activities devastated their competitive position as the administrative process ground on, were deeply

¹ These matters are detailed throughout, and summarized in Paragraphs 67-73 of, the Enforcement Bureau’s December 24, 2002 “Proposed Findings of Fact and Conclusions of Law” in this proceeding.

² As noted in KSRM’s proffered Comments, the subject legislative provisions were tacked on to the end, and are entirely extraneous to, satellite legislation, are replete with internal contradictions and hopelessly vague terminology that defy rational interpretation or application to the case at bar, were never subject to debate, discussion or even simple notification to the Commission, and thus bear all the signs of a last-minute desperate political ploy.

disappointed that the Bureau, which was to have strongly represented their interests, has left them without effective representation.

While KSRM respects the Enforcement Bureau's right to assess each situation as it feels appropriate under all applicable circumstances (including possible considerations beyond the scope of this case and to which KSRM does not claim to be privy) and to evolve its approach accordingly, the fact remains that the Bureau is no longer proceeding as a forceful advocate. Consequently, it would appear that others must fill that role. Thus, the Commission would appear to have little choice but to rely upon private parties such as KSRM and perhaps others who have been severely damaged by PCI's deplorable behavior that led to this case and who retain a strong desire to ensure that PCI adheres to the same competitive standards of lawful conduct as they have chosen to follow (albeit to their detriment).³

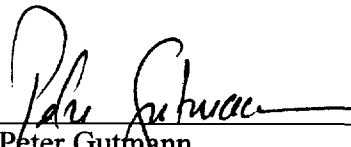
Justice requires dedicated presentation of a variety of relevant opposing viewpoints so that the Commission may reach a reasoned decision. Here, by default, forceful advocacy of a position contrary to PCI appears to have fallen to KSRM and others outside the Commission. Since the Enforcement Bureau apparently is no longer advancing their interests, those who brought this case and whose ability to compete on a level playing field depends upon its outcome should be allowed to present their own position. As noted in the Comments, the ultimate import of this case transcends the specific situation at bar and threatens the very basis of future FCC regulation over the broadcast industry. Consequently, the instant comments should be accepted

³ On February 15, 1996 KSRM filed a letter requesting that the Commission require certain of the captioned facilities to cease their illegal operation, followed by a formal March 1, 1996 petition to deny their renewals, and numerous other letters and pleadings during the many years before meaningful relief appeared to be at least a possibility. Not only did KSRM participate vigorously in the earlier phases which led to this proceeding, but its President, John Davis, appeared as a witness in this case to testify as to the devastating financial impact PCI's illegal operations had on his full-service stations in the same markets. Thus, although not a party to this phase of the proceeding, KSRM is far from an outsider.

and considered in order to ensure that the Commission has the benefit of a full range of views in resolving this crucial matter.

Respectfully submitted,

KSRM, INC.

By: 
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December 17, 2004

Certificate of Service

I, Peter Gutmann, an attorney in the law firm of Womble Carlyle Sandridge & Rice, PLLC, do hereby certify that I have on this 17th of December, 2004, caused copies of the foregoing Petition of KSRM, Inc. for Leave to File Comments to be mailed to the following by first-class United States mail, postage prepaid:

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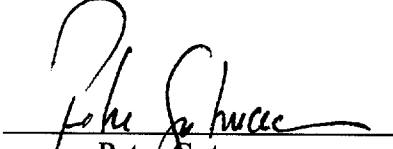
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